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Honorable Lonny R. Suko

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

COLUMBIA RIVERKEEPER,)

Plaintiff,)

v.)

SANDVIK SPECIAL METALS,)

LLC,)

Defendant.)

_____)

No. 4:15-CV-05118-LRS

CONSENT DECREE

I. STIPULATIONS.

Sandvik Special Metals, LLC (“Sandvik”) owns and operates a zirconium and titanium tube forming and surface finishing facility located at or near 235407 East State Route 397, Kennewick, Washington 98632 (referred to herein as the “Facility”).

Sandvik discharges treated wastewater and non-contact cooling water from the Facility to the Columbia River under a permit issued by the Washington

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1 Department of Ecology (“Ecology”) under National Pollutant Discharge
2 Elimination System (“NPDES”) Permit No. WA-000370-1 (“Permit”).

3
4 Columbia Riverkeeper (“Riverkeeper”) issued a notice of intent to sue letter
5 dated September 24, 2015, and filed a complaint on November 30, 2015, under
6 section 505 of the Clean Water Act (“CWA”), 33 U.S.C. § 1365, alleging that
7
8 Sandvik is in violation of certain Permit terms.

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10 Riverkeeper issued a second notice of intent to sue letter dated December 21,
11 2015, and filed an amended complaint on March 14, 2016, alleging that Sandvik is
12 in violation of certain additional Permit terms.

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14 Riverkeeper’s complaint and amended complaint seek declaratory and
15 injunctive relief, the imposition of civil penalties, and an award of litigation
16 expenses, including attorney and expert fees.

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18 Sandvik denies any and all of Riverkeeper’s claims in its notice of intent to
19 sue letters, complaint, and amended complaint.

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21 Solely for the purposes of this Consent Decree, Sandvik and Riverkeeper
22 (collectively, the “Parties”) stipulate that the Court has jurisdiction over the Parties
23 and the subject matter of this action under section 505(a) of the CWA, 33 U.S.C.
24 § 1365(a).

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26 Sandvik prepared a September 2016 engineering report describing certain
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28 modifications proposed for the wastewater treatment systems at the Facility

designed to ensure future performance under the Permit and any successor NPDES permit, once effective.

Ecology approved the September 2016 engineering report on December 19, 2016.

The Parties agree that settlement of this matter is in the best interest of the Parties and the public and that entry of this Consent Decree without additional litigation is the most appropriate means of resolving in full this action.

The Parties stipulate to the entry of this Consent Decree without trial, adjudication, or admission of any issues of fact or law regarding the claims and allegations set forth in Riverkeeper's notice of intent to sue letters, complaint, and amended complaint.

The signatories for the Parties certify that they are authorized by the party they represent to enter into these Stipulations and Consent Decree.

COLUMBIA RIVERKEEPER

SANDVIK SPECIAL METALS, LLC

By: s/ Brett VandenHeuvel
Brett VandenHeuvel, Executive Director

By: Orjan Blom
Orjan Blom, President

KAMPMEIER & KNUTSEN, PLLC

MORGAN, LEWIS & BOCKIUS, LLP

By: s/ Brian A. Knutsen
Brian A. Knutsen, WSBA No. 38806
Attorney for Columbia Riverkeeper

By: David K. Brown
David K. Brown, *admitted pro hac vice*
Attorney for Sandvik Special Metals, LLC

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II. ORDER AND DECREE

THIS MATTER came before the Court upon the foregoing Stipulations of the Parties and joint motion for entry of Consent Decree. Having considered the Stipulations and the terms and conditions set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to section 505(a) of the CWA, 33 U.S.C. § 1365(a).

2. This Consent Decree shall inure to the benefit of, and be binding upon, the Parties and their successors, assigns, officials, agents, representatives, officers, directors, and employees. Changes in the organizational form or status of a party shall have no effect on the binding nature of this Consent Decree or its applicability.

3. This Consent Decree, and any injunctive relief ordered within, applies solely to Sandvik's wastewater discharges from the Facility subject to the Permit.

4. This Consent Decree is a full and complete settlement and release of any and all claims and demands of any kind, nature, or description whatsoever, and from any and all liabilities, damages, injuries, costs, attorneys' fees or expenses, actions or causes of action of any nature whatsoever, either at law or in equity, known or unknown, fixed or contingent, which Riverkeeper may have against

1 Sandvik and its respective parents, affiliates, subsidiaries, divisions, insurers,
2 successors, assigns, and current and former employees, attorneys, officers,
3 directors and agents arising from, or related to, the discharge of wastewater from
4 the Facility that are subject to the Permit and/or the acts, facts, or transactions
5 described or alleged in Riverkeeper's notice of intent to sue letters, complaint, and
6 amended complaint. These claims are released and dismissed with prejudice.
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9 5. This Consent Decree is a settlement of disputed facts and law. It is not
10 an admission or adjudication regarding any allegations by Riverkeeper in this case
11 or of any fact or conclusion of law related to those allegations. Neither this
12 Consent Decree nor any payment pursuant hereto shall constitute evidence or be
13 construed as a finding, adjudication, or acknowledgment of any fact, law or
14 liability, nor shall it be construed as an admission of violation of any law, rule or
15 regulation.
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19 6. Sandvik agrees to the following terms and conditions in full and
20 complete satisfaction of all the claims covered by this Consent Decree:
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22 a. Sandvik shall use its best efforts to fully comply with the
23 numeric effluent limits for ammonia established by the Permit or any successor
24 NPDES permit authorizing discharges of wastewater from the Facility by
25 December 31, 2017, and with all other requirements of the Permit or successor
26 permit upon entry of this Consent Decree by the Court.
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1 b. No later than December 31, 2017, Sandvik shall fully
2 implement the wastewater treatment measures described in the September 2016
3 engineering report submitted to and approved by Ecology, as modified by any
4 subsequent revisions approved by Ecology.
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6 c. Upon full implementation of the measures described in the
7 2016 engineering report, Sandvik shall provide written notification thereof to
8 Riverkeeper.
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10 7. In recognition of the commitment to complete the wastewater
11 improvement measures hereunder and in lieu of payment of any penalties, which
12 have been disputed but may have been assessed in this action if it had been
13 adjudicated adverse to Sandvik, Sandvik shall make the following payments within
14 fourteen (14) calendar days of the entry of this Consent Decree:
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16 a. To Futurewise in the amount of four hundred thousand dollars
17 (\$400,000.00) for a project or projects to protect clean water in the Columbia River
18 basin or otherwise remediate damage to the Columbia River as described in
19 **Attachment A to this Consent Decree.** Such payment shall be made by check
20 with a copy provided to Riverkeeper at that same time. The check shall be made
21 payable to “Futurewise” and shall bear the notation “Columbia Riverkeeper v.
22 Sandvik Special Metals Clean Water Act Settlement.” The check shall be mailed to
23 “Futurewise; 816 Second Avenue, Suite 200; Seattle, WA 98104.”
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1 b. To Friends of Toppenish Creek in the amount of fifty thousand
2 dollars (\$50,000.00) for a project or projects to protect clean water in the Columbia
3 River basin or otherwise remediate damage to the Columbia River as described in
4 **Attachment B to this Consent Decree.** Such payment shall be made by check
5 with a copy provided to Riverkeeper at that same time. The check shall be made
6 payable to “Friends of Toppenish Creek” and shall bear the notation “Columbia
7 Riverkeeper v. Sandvik Special Metals Clean Water Act Settlement.” The check
8 shall be mailed to “Friends of Toppenish Creek, 3142 Signal Peak Road, White
9 Swan, WA 98952.”
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11 c. To Center for Environmental Law & Policy in the amount of
12 two hundred thousand dollars (\$200,000.00) for a project or projects to protect
13 clean water in the Columbia River basin or otherwise remediate damage to the
14 Columbia River as described in **Attachment C to this Consent Decree.** Such
15 payment shall be made by check with a copy provided to Riverkeeper at that same
16 time. The check shall be made payable to “Center for Environmental Law &
17 Policy” and shall bear the notation “Columbia Riverkeeper v. Sandvik Special
18 Metals Clean Water Act Settlement.” The check shall be mailed to “Center for
19 Environmental Law & Policy; 85 S. Washington Street, Suite 301; Seattle, WA
20 98104.”
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1 8. Within fourteen (14) calendar days of entry of this Consent Decree,
2 Sandvik shall pay Riverkeeper's attorney fees and costs in the amount of one
3 hundred ninety-five thousand, four hundred seventy-five dollars (\$195,475.00) in
4 full and complete satisfaction of any claims Riverkeeper may have under the CWA
5 for all costs of litigation, including investigative, expert and attorneys' fees and
6 costs incurred by Riverkeeper that have or could have been claimed in connection
7 with Riverkeeper's claims, up to and including the entry of this Consent Decree.
8 Such payments shall be made by check payable to "Kampmeier & Knutsen,
9 PLLC" and mailed to "Kampmeier & Knutsen, PLLC; 833 S.E. Main Street, No.
10 318; Portland, OR 97214." Riverkeeper's above-signed counsel hereby certifies
11 that the actual costs and fees incurred in this matter equal or exceed one hundred
12 ninety-five thousand, four hundred seventy-five dollars (\$195,475.00).
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18 9. This Court retains jurisdiction over this matter and, while this Consent
19 Decree remains in force, this case may be reopened without filing fee so that the
20 Parties may apply to the Court for any further order or relief that may be necessary
21 regarding compliance with this Consent Decree or to resolve any dispute regarding
22 the terms or conditions of this Consent Decree until it is terminated. A
23 precondition to any application to the Court under this paragraph is that the Parties
24 must first seek to resolve the dispute themselves as follows: (1) the party
25 identifying or wishing to raise an issue or dispute must provide the other party a
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1 written notice detailing the nature of the issue or dispute; and (2) within thirty (30)
2 calendar days of receipt of such notice, the Parties shall meet and confer regarding
3 the issue or dispute. If no resolution is reached at that meeting or within thirty (30)
4 calendar days of the written notice, whichever occurs first, either party may file a
5 motion with this Court to resolve the dispute. In any action to enforce this Consent
6 Decree, the Court shall apply the same standard applied by courts in awarding fees
7 and costs under section 505(d) of the CWA, 33 U.S.C. 1365(d), but the Parties
8 otherwise reserve all rights and arguments concerning the right to and the
9 allocation of attorneys' fees and costs in connection with the resolution of any such
10 dispute.
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15 10. This agreement shall take effect upon entry of the Consent Decree by
16 the Court.
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18 11. The provisions of this Consent Decree shall terminate one (1) year
19 from the date of the written notification to Riverkeeper in accordance with
20 Paragraph 6.c or upon compliance with the payment obligations in Paragraphs 7
21 and 8 of this Consent Decree, whichever is later.
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24 12. During the effective period of this Consent Decree set forth in
25 Paragraphs 10 and 11, Riverkeeper shall not support other lawsuits, by providing
26 financial assistance, personnel time or other affirmative actions, against or relating
27 to the Facility that may be proposed by other groups or individuals who would rely
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upon the citizen suit provision of the CWA to challenge the Facility's compliance with the Permit or any successor thereto.

13. All notices and other communications regarding this Consent Decree shall be in writing and shall be fully given by mailing via first-class mail, postage pre-paid; by delivering the same by hand; or by sending the same via e-mail to the following addresses, or to such other addresses as the Parties may designate by written notice, provided that communications that are mailed shall not be deemed to have been given until three (3) business days after mailing:

For Riverkeeper:

Columbia Riverkeeper
c/o Miles Johnson
111 Third Street
Hood River, OR 97031
miles@columbiariverkeeper.org

Kampmeier & Knutsen, PLLC
c/o Brian Kuntsen
833 S.E. Main Street, No. 318
Portland, OR 97214
brian@kampmeierknutsen.com

For Sandvik:

Sandvik Special Metals, LLC
c/o Örjan Blom
235407 E S.R. 397
Kennewick, Washington 98632
orjan.blom@sandvik.com

Morgan, Lewis & Bockius LLP
c/o David K. Brown
300 S. Grand Avenue, 22nd Floor
Los Angeles, CA 90071
david.brown@morganlewis.com

14. This Consent Decree constitutes the entire agreement between the Parties. There are no other or further agreements, either written or verbal. This agreement may not be modified or amended except by a writing signed by both Parties and entered by the Court.

1 15. Each party acknowledges that it has sought and obtained the advice of
2 its own independent legal counsel before executing this Consent Decree. The
3 Parties acknowledge that they have had the opportunity to freely negotiate the
4 terms of this Consent Decree.
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6 16. If any term, covenant, or condition of this Consent Decree is held to
7 be invalid or unenforceable in any respect, such invalidity or unenforceability shall
8 not affect any other provision included in this Consent Decree.
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11 17. If for any reason the Court should decline to approve this proposed
12 Consent Decree in the form presented, this Consent Decree is voidable at the
13 discretion of either party. The Parties agree to continue negotiations in good faith
14 in an attempt to cure any objection raised by the Court to entry of this Consent
15 Decree.
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18 18. Each party shall, at the request of the other, execute, acknowledge,
19 and deliver whatever additional documents, and do such other acts, as may be
20 reasonably required in order to accomplish and/or carry out the intent, spirit, and
21 purposes of this Consent Decree.
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24 19. If any event occurs that is outside of the reasonable control of Sandvik
25 (a “force majeure event” as further defined below), which causes a delay in
26 performing tasks required by this Consent Decree, the delay shall not constitute a
27 failure to comply with the terms of this Consent Decree, provided that Sandvik has
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1 submitted written notification to Riverkeeper no later than seven (7) calendar days
2 after the date that Sandvik first concludes that such event has caused or will cause
3 noncompliance, describing the length or anticipated length of non-compliance, the
4 precise circumstances causing non-compliance, the measures taken or to be taken
5 to prevent or minimize non-compliance, and a schedule for implementation of the
6 measure to be taken.
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9 A force majeure event shall include, but not be limited to the following, to
10 the extent they are outside the reasonable control of Sandvik and cannot be
11 overcome by diligence:
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- 13 A. Acts of God, war, insurrection, or civil disturbance;
- 14 B. Earthquakes, landslides, fire, floods;
- 15 C. Actions or inactions of third parties over which Sandvik has no
16 control;
- 17 D. Adverse weather conditions or unusual delay in transportation;
- 18 E. Restraint by court order or order of public authority;
- 19 F. Governmental approvals and authorizations;
- 20 G. Strikes; and
- 21 H. Any other litigation or arbitration that causes delay.

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23 Provided that Sandvik complies with the notice provision of this paragraph,
24 then in the event that Sandvik fails to comply or anticipates failing to comply with
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1 the requirements of this Consent Decree because of a force majeure event,
2 Sandvik's failure to comply, as described in the written notice to Riverkeeper
3 under this paragraph, shall not be a violation of this Consent Decree and shall not
4 result in any liability or other sanctions. In such event, the milestone date(s) shall
5 be extended for a reasonable period of time following the force majeure event.
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8 20. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no
9 consent judgment can be entered in a CWA suit in which the United States is not a
10 party prior to forty-five (45) calendar days following the receipt of a copy of the
11 proposed consent judgment by the U.S. Attorney General and the Administrator of
12 the U.S. Environmental Protection Agency ("U.S. EPA"). Therefore, no later than
13 five (5) calendar days after the filing of this proposed Consent Decree by the
14 Parties, Riverkeeper shall serve copies of this Consent Decree via certified mail,
15 return receipt requested, upon the Administrator of the U.S. EPA and the U.S.
16 Attorney General. Riverkeeper shall provide copies of the return receipts to
17 Sandvik upon receipt by Riverkeeper.
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25 DATED this 17th day of April, 2017.

26 *s/Lonny R. Suko*
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28 LONNY R. SUKO
29 SR. UNITED STATES DISTRICT JUDGE